VERMONT
LONG TERM CARE OMBUDSMAN PROJECT

Annual Report

October 1, 2007 - September 30, 2008

STATE LONG TERM CARE OMBUDSMAN
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ANNUAL REPORT
OCTOBER 1, 2007 - SEPTEMBER 30, 2008

Introduction

Long term care ombudsmen protect the health, welfare and rights of Vermonters who live in long term care facilities throughout the state. They also assist individuals who receive long term care services in their homes through the Choices for Care (CFC) program.

Regardless of the setting, the ombudsmen's primary responsibility is to help individuals find solutions to specific problems. And, while working to resolve these individual complaints, ombudsmen often facilitate changes in attitudes, practices and policies that improve the care and quality of life for all Vermonters who receive long term care services.

In addition to their specific duty to investigate and resolve complaints, federal and state law require ombudsmen to:

- help individuals who receive long term care services seek administrative and legal remedies to protect their rights, health, safety and welfare;
- review and comment on any existing or proposed law, regulations or policies related to the rights and well being of individuals receiving long term care services; and
- educate community members about Vermont's long term care system and about the issues that effect individuals who receive long term care services in facilities or in their own homes through the Choices for Care program.

As a result of this broad mandate, the Vermont Long Term Care Ombudsman Project plays an important role in improving Vermont's long term care system through education and administrative and legislative advocacy.

Last year the project was staffed by a director and six regional ombudsmen. We also had a full time volunteer coordinator for a portion of the year. In addition, we relied on 23 dedicated, certified volunteers to help us maintain a consistent presence in the state's 42 nursing homes, 112 residential care homes and six assisted living residences.

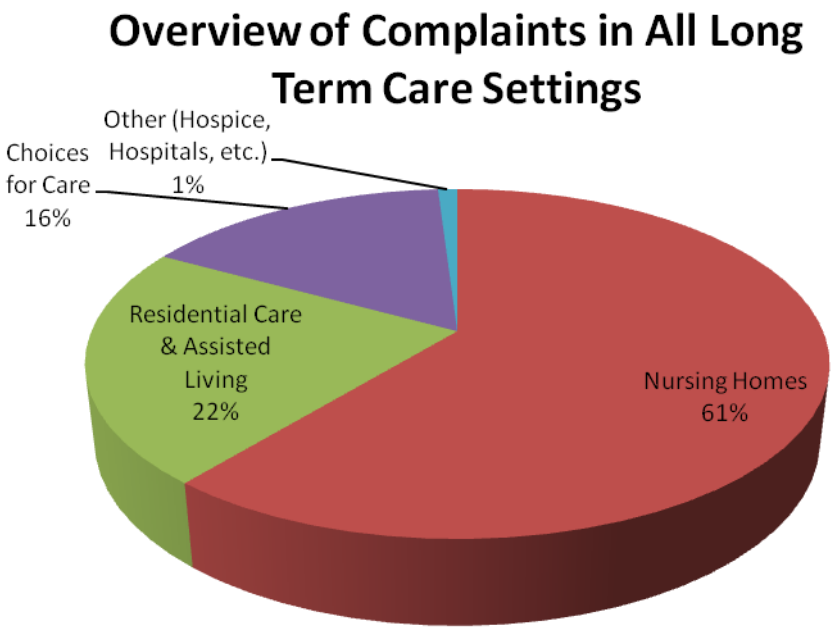
Though the setting for receiving care may vary, we receive the same kind of complaints across the long term care continuum. Individuals want to be treated with dignity. They are concerned about access to care and about quality of care. And, they want their care to reflect their personal preferences and their individualized needs.

Complaints

In FY 08, ombudsmen responded to 744 complaints. Of these, 117 involved individuals who receive long term care services in the community through the Choices for Care Program (CFC). The federal Administration on Aging (AoA) defines a complaint as any concern that is brought to the attention of the ombudsmen relating to the health, safety, welfare or rights of a resident. The complaint statistics in this report give an overview of the issues that were important to individuals receiving long term care services last year.

- Distribution of complaints among all long term settings

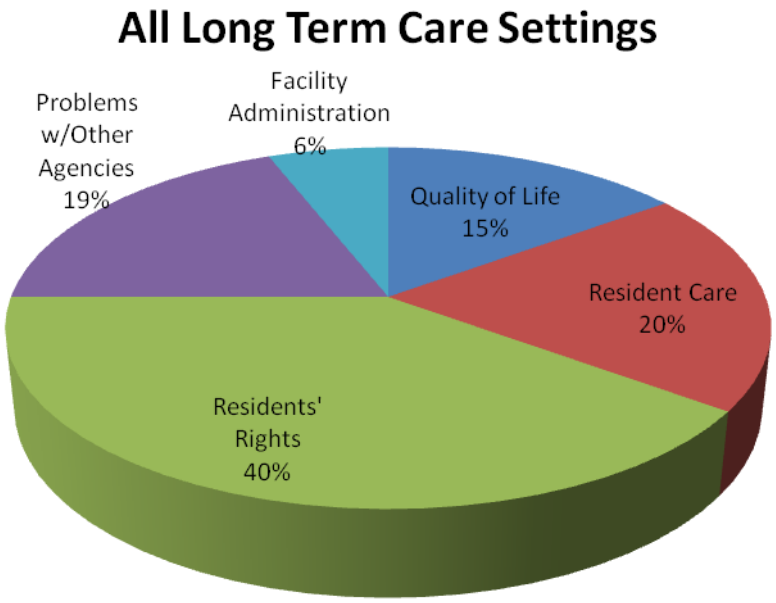
The chart below shows the distribution of complaints among all the long term care settings. We responded to a total of 744 complaints. The number of CFC complaints has increased due to extensive outreach during the past year. The public, providers and other advocates are better informed about how to access ombudsmen.



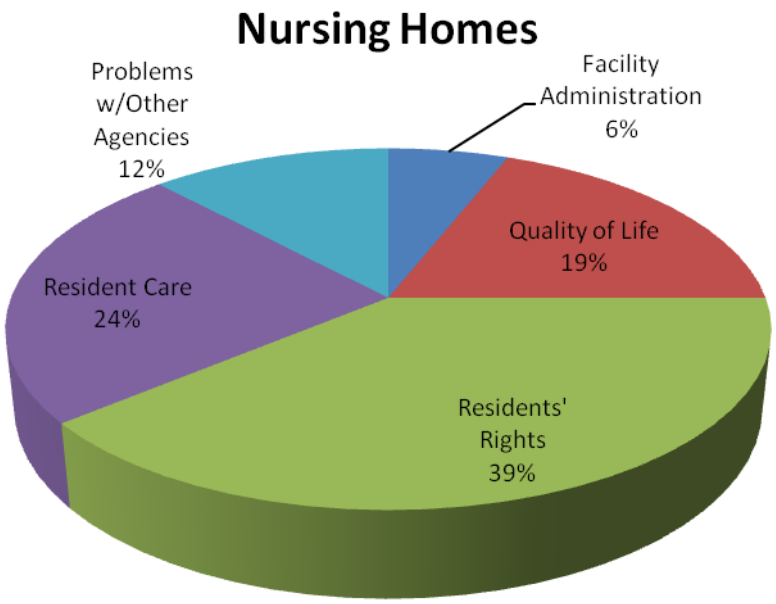
- Complaint Categories

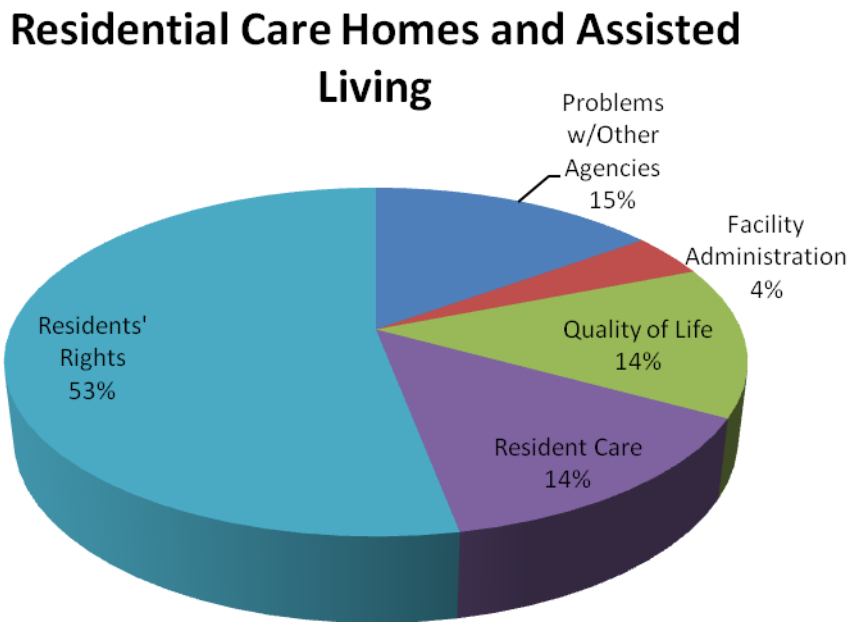
The Administration on Aging (AoA) and the Department of Aging and Independent Living (DAIL) require us to collect and record specific information about each complaint we receive. We must note the type of complaint, who made the complaint and how it was resolved. It is important to keep in mind that not all the complaints we receive are against facilities.

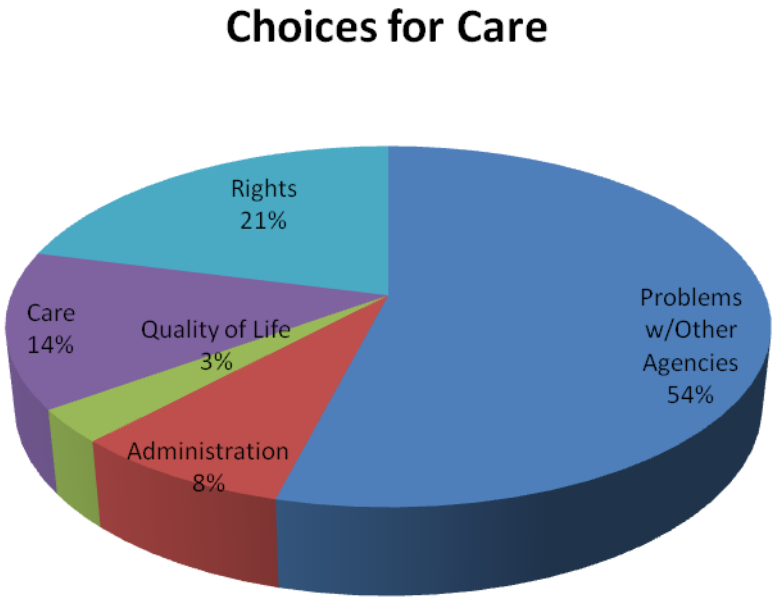
Complaints are divided into five major categories. This allows us to monitor complaint trends from year to year. As in prior years, we received more complaints about residents' rights than any other category.



See Appendix 1 for the specific number of complaints in each category


Nursing Homes
Problems w/Other Agencies 12%
Facility Administration 6%
Quality of Life 19%
Resident Care 24%
Residents' Rights 39%


Residential Care Homes and Assisted Living
Problems w/Other Agencies 15%
Facility Administration 4%
Quality of Life 14%
Resident Care 14%
Residents' Rights 53%



Approximately 54% of the CFC complaints involved problems with other agencies, including the home health agency or DAIL. Many of these complaints were related to reduction or termination of CFC services.

- Some specific complaints that we received last year:

A CFC client complained that her case manager ignored her preferences regarding who should provide companion care. The ombudsman facilitated a meeting with the client, her daughter and the case manager. They were able to agree on what services the client wants and who will provide those services.

•

A CFC client complained that her doctor terminated his relationship with her and refused to refill her prescription. She could not find a new doctor and she needed her medication. The ombudsman reminded the doctor that a Vermont Board of Medical Practice Advisory requires him to provide treatment for 30 days after services are terminated. He refilled her prescription.

•

A 102 year old CFC client wanted additional respite hours so she could remain in her home. Her home health case manager told her that the state would never authorize additional respite. The Ombudsman contacted the Department of Aging and Independent Living. They agreed to give the client 240 hours of additional respite. She was able to remain in her own home.

•

A CFC client's colostomy bag kept leaking during the night. The home health agency said that they would no longer send the "on call" nurse to fix it. The ombudsman convened a care plan meeting and the home health agency agreed to give the client the training needed to fix the bag herself.

A CFC client complained that the home health aide was not coming when scheduled and failed to provide all the care she was supposed to receive under her care plan. The ombudsman initiated a care plan meeting. Home health agency began providing all the care that was required and recommended that the client receive additional respite hours.

•

The nursing home threatened to discharge a resident because his room was cluttered and messy. Ombudsman told the nursing home administrator that this was not legitimate grounds for discharging the resident. The administrator wanted the resident to assume more responsibility for cleaning his room. The ombudsman explained that he was in the nursing home because he needed assistance. The resident agreed that he would not hinder staff when they came to clean and the administrator agreed that the social worker and an aide would check in with the resident periodically to help him tidy up his personal belongings.

•

A resident in a residential care complained that she was in constant pain because she had shingles on her stomach and waist. The staff and her doctor were trying to determine what medications might alleviate the pain. In the meantime, she was wearing pants with a snug elastic waist. The resident said that she would be more comfortable in looser clothing. The only loose clothing she had was a night gown, but the staff would not let her change until bedtime. The ombudsman talked to staff. They gave the resident a loose fitting housedress. She changed and was much more comfortable.

•

A nursing resident who had a stroke complained that she was having difficulty eating. She no longer could use her right hand to eat. She really liked pasta. The facility served it often, but she had trouble keeping it on her plate. She asked for a bowl, but the facility refused. The administrator said that it looked "tacky" for residents to be eating out of bowls in the dining room. The ombudsman talked to the administrator who eventually agreed to allow the resident to use a bowl instead of a plate.

•

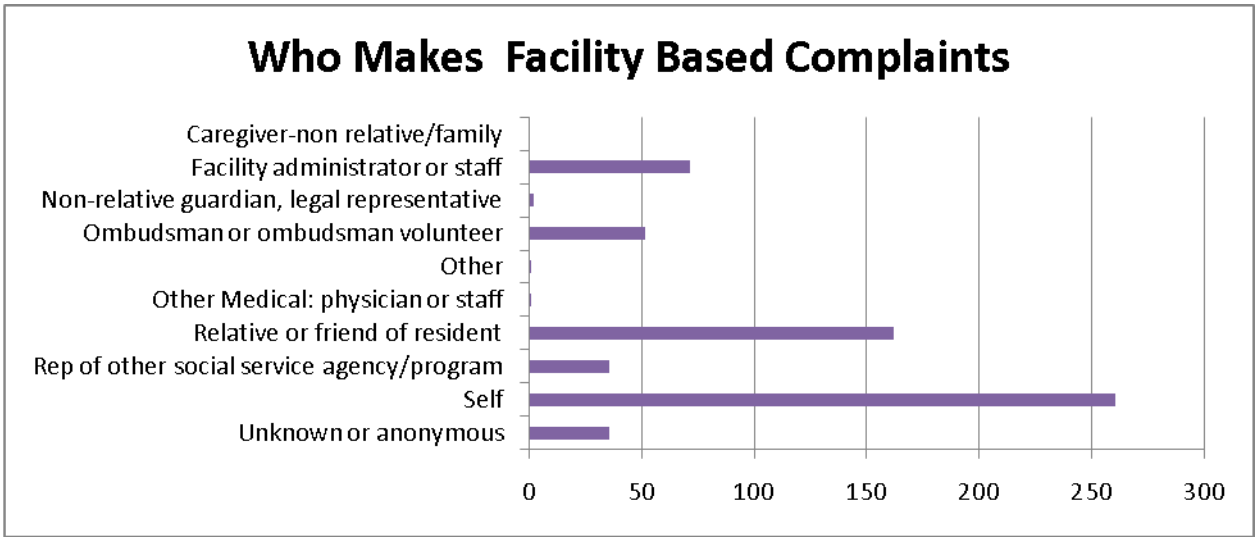
A nursing home resident wanted a whirlpool bath. The staff told him he could not use the whirlpool because the lift chair they used to transfer him into the tub was old and it would be unsafe due to his weight. In fact, the staff was reluctant to use the whirlpool because it was located on the other side of the building. The ombudsman volunteer talked to staff about their concerns. They agreed to take the client to the whirlpool. And, the facility agreed to replace the old equipment.

- **Who makes complaints?**

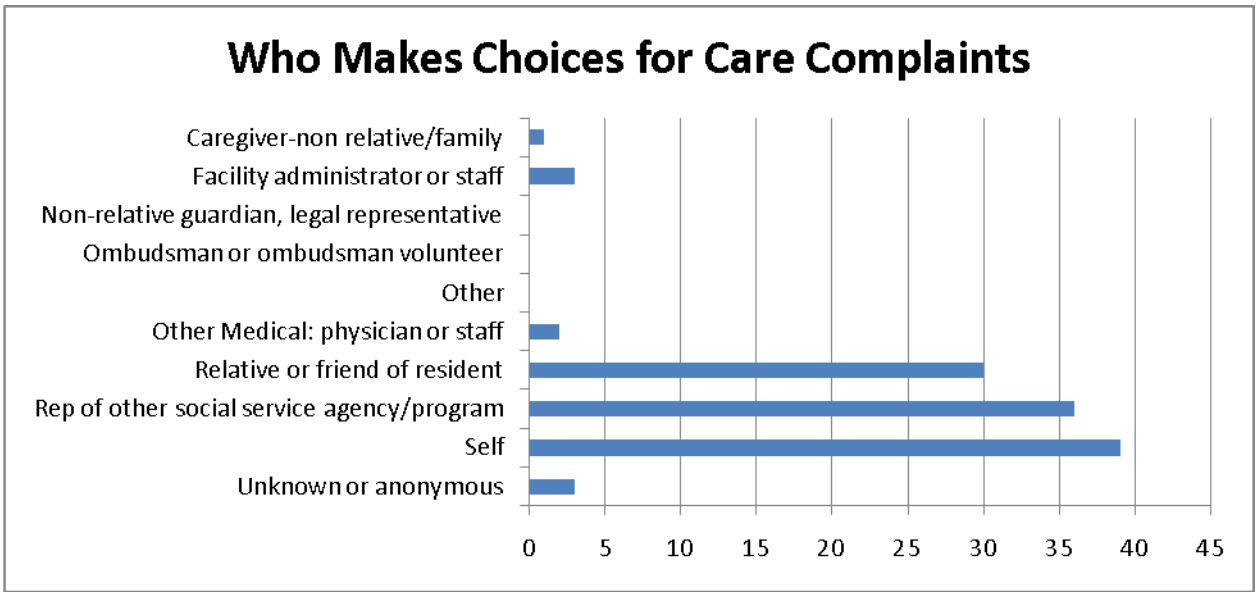
Ombudsmen investigate every complaint they receive. Ombudsmen must represent the interests of the person receiving long term care services and resolve problems to their satisfaction, regardless of who makes the complaint.

About two thirds of the complaints that we investigated last year were made by individuals receiving services or their families or friends. Facility staff and home care providers often contact us when confronted with a particularly challenging resident or unique behavior problem.

Many facilities recognize that individuals receiving services need an independent advocate, like an ombudsman, to make sure that their concerns are understood and addressed.



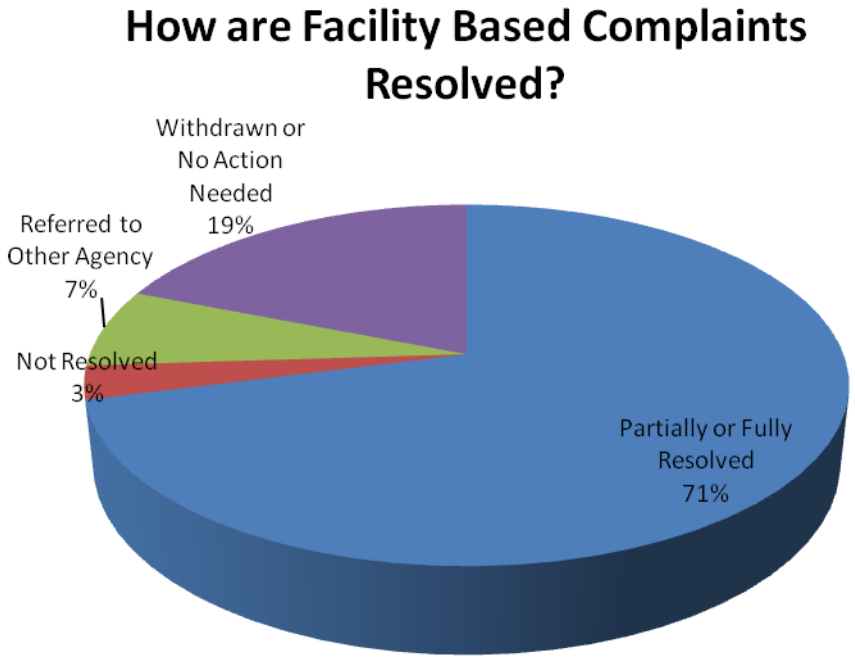
We received a significant number of CFC complaints from other social service agencies or programs like the Area Agencies on Aging.



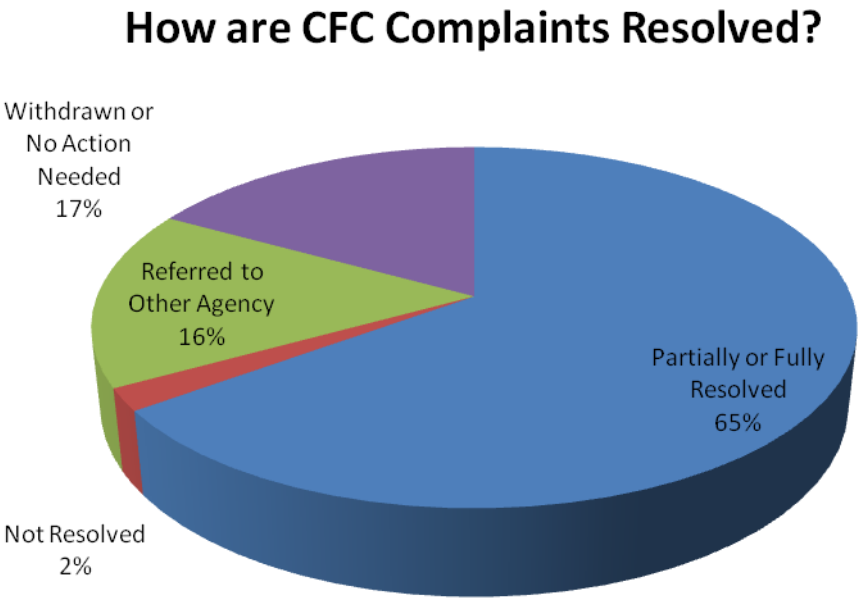
- Resolution of Complaints

Ombudsmen will try to talk with the individual receiving services to determine the nature of the problem and find out how they would like it to be resolved. If we cannot get direction from the individual, we work with who ever has the authority to make decisions for the resident, like a guardian or agent. In some cases, the ombudsman cannot verify that a problem actually exists. For example, Ms. Jones complains that the aides are stealing her clothes. The ombudsman investigates and finds that the aides are hanging the clothes in the closet rather than leaving them on the chair. Although this still falls within the definition of a complaint, it is not a "verified" complaint. And, the ombudsman will still work to resolve the problem to Ms. Jones' satisfaction.

We referred approximately 17% of our CFC complaints to other agencies, including other projects within VLA. Many of our CFC complaints involve a reduction or termination of services. Often, these cases can only be resolved by appealing the termination or reduction. We refer these cases to both the Senior Citizens Law Project and the Disability Law Project for representation in the appeal.



Approximately 83% of complaints were verified and reflect real problems and concerns.



Approximately 71% of all complaints were either partially or fully resolved.

Other Activities

In addition to investigating complaints, ombudsmen educate consumers and facility staff and other providers on issues that affect individuals receiving long term care services. Ombudsmen provide information to consumers about long term care issues. They answer specific questions about Vermont's long term care system. They also work with resident and family councils. They consult with facility staff and deliver trainings to staff on specific issues like residents rights, the role of the ombudsman and advance directives. Ombudsmen also make routine, non-complaint related visits to all long term facilities.

- Activities in FY08:

→ **1,458** routine, non-complaint related visits to long term care facilities

Maintaining a regular presence gives residents the opportunity to get to know and trust the ombudsmen. And, it gives ombudsmen the opportunity to monitor conditions in the facility.

→ **232** consultations to consumers

Consumers often have questions about Vermont's long term care system. They often have questions about their rights and how to access other services.

→ **178** consultations to facility staff

A facility might contact the ombudsmen with a general question about how residents finance their care or access legal services. Staff often contacts ombudsmen when confronted with a particularly challenging resident or unique behavior problem.

→ **57** consultations to resident or family councils

Every nursing home is required to have a resident council. A resident council is a group of residents who meet regularly to discuss specific concerns, plan activities and make suggestions. At the council's invitation, ombudsmen attend meetings to help residents identify problems, develop suggestions or recommendations and monitor the homes response.

→ **22** trainings for facility staff

Regardless of the training topic, the primary goal of the ombudsman is to remind staff that each resident is unique with his or her own story, family, abilities, talents and preferences. And, that they each deserve individualized care.

Volunteer Program

The Ombudsman Project relies on certified volunteers to maintain a regular presence in Vermont's 160 long term care facilities. They are our eyes and ears. They respond to individual complaints, attend resident council meetings and monitor conditions in each home. Volunteers participate in a comprehensive training program before they are certified. The program begins with 20 hours of classroom training. After the classroom training, volunteers "shadow" their supervising regional ombudsman for 30 hours of facility based field training. In FY 2008, 23 volunteers contributed approximately 2200 hours to the program.

Certified Volunteers

Hilary Adams
Richard Ashton
Patricia Bermon
Heather Cipolla
Genie Christiansen
Shirley Clark
Ann Doucette
Phil Gray
Anzi Jacobs
Sally Lindberg
Jane McDay
Winifred McDowell
Kate McGowen
Gloria Mindel
Ruth Potter
Martha Quinlan
Lynn Reilly
William Ringwall
Carol Schoneman
Jane Thompson
Ellie Tobin
Russell Tonkin
Steve Williams

Looking Ahead

- **Improve access to mental health services for individuals in long term care facilities**

It is often difficult for individuals in long term care facilities to access mental health services. It is unclear which agency has responsibility for funding these services. Resources are limited and staff often does not receive adequate training.

The State Long Term Care Ombudsman will work with DAIL and providers to better define and quantify the problem and to develop a plan for improving ling term care residents' access to mental health services.

- **Improve the accountability and performance of guardians**

Last year the legislature made significant reforms to the adult involuntary guardianship statute. As part of these reforms it established a committee to look at ways to improve the performance. The State Long Term Care Ombudsman served on this committee.

In the upcoming year the State Long Term Care Ombudsman will work with other stakeholders to lobby for legislation, rules and best practices that will improve the accountability of guardians and offer needed protections to persons under guardianship.

Jackie Majoros
State Long Term Care Ombudsman
February 2009

Appendix 1

VERMONT LONG TERM CARE OMBUDSMAN PROJECT

Number of Closed Complaints in the Five Major Complaint Categories
October 1, 2007 - September 3, 2008

1. RESIDENTS' RIGHTS	Nursing Facilities	Residential Care Homes And Assisted Living	CFC
A. Abuse, neglect, exploitation	9	1	1
B. Access to information	14	13	0
C. Admission, transfer, discharge	42	12	8
D. Autonomy, choice, dignity, privacy, staff attitudes	84	43	14
E. Financial, property	31	18	2
TOTAL	**180**	**87**	**25**

2. RESIDENT CARE	Nursing Facilities	Residential Care Homes And Assisted Living	CFC
F. Care	71	17	7
G. Rehabilitation, maintenance of function	36	5	9
H. Restraints	3	0	0
TOTAL	**110**	**22**	**16**

3. QUALITY OF LIFE	Nursing Facilities	Residential Care Homes And Assisted Living	CFC
I. Activities and social services	22	3	0
J. Dietary	36	4	1
K. Environment	29	15	2
TOTAL	**87**	**22**	**3**

4. ADMINISTRATION	Nursing Facilities	Residential Care Homes And Assisted Living	CFC
L. Policies, procedures, attitudes, resources	10	3	0
M. Staffing	17	3	10
TOTAL	**27**	**6**	**10**

5. PROBLEMS WITH OTHER AGENCIES	Nursing Facilities	Residential Care Homes And Assisted Living	CFC
N. Certification, licensing agency	0	0	0
O. State Medicaid agency	8	4	20
P. Others	45	21	43
TOTAL	**53**	**25**	**63**
TOTAL FOR ALL COMPLAINT CATEGORIES	**457**	**162**	**117**

NUMBER OF CLOSED NH, RCH, AND ALR COMPLAINTS: 619
NUMBER OF CLOSED CHOICES FOR CARE COMPLAINTS: 117
NUMBER OF CLOSED OTHER COMPLAINTS (HOSPITALS, ETC.): 8

TOTAL NUMBER OF CLOSED COMPLAINTS: 744

Appendix 2

HISTORY OF THE OMBUDSMAN PROGRAM

At the National Level:

The Long Term Care Ombudsman Program first began in 1972 in response to growing concerns about the quality of care and quality of life in nursing homes. The program originated as a five state demonstration project mandated by the Older Americans Act (OAF). In 1978, the OAF was amended to require each state to establish an ombudsman program. In 1981, Congress expanded the scope of the ombudsman program to include residential care homes, but it did so without allocating any additional funds.

In 1987, Congress strengthened the ombudsmen's ability to serve and protect long term residents. The Nursing Home Reform Act of 1987 (OBRA '87) required nursing home residents to have "direct and immediate access to ombudspersons when protection and advocacy services become necessary." The 1987 reauthorization of the OAA required states to guarantee ombudsmen access to facilities and to patient records. It also allowed the state ombudsman to designate local ombudsmen and volunteers to be "representatives" of the state ombudsman with all the necessary rights and responsibilities.

The 1992 amendments to the OAA incorporated the long term care ombudsman program into a new Title VII for "Vulnerable Elder Rights Protection Activities". The amendments also emphasized the ombudsman's role as an advocate and agent for system wide change.

In Vermont:

Vermont's first ombudsman program was established in 1975. Until 1993, the state ombudsman was based in the Department of Aging and Disabilities (DAD). An ombudsman worked in each of the five Area Agencies on Aging. In response to concerns that it was a conflict to house the state ombudsman in the same Department as the Division of Licensing and Protection, which is responsible for regulating long term care facilities, the legislature gave DAD the authority to contract for ombudsman services outside the Department.

Since October of 1993, the Vermont Long Term Care Ombudsman Project, a special project within Vermont Legal Aid, Inc. (VLA). has been providing ombudsman services to Vermont's long term care residents. Ombudsman staff are based in VLA offices throughout the state.

In 2005 the Vermont legislature expanded the duties and responsibilities of the long term care ombudsman project. Act No. 56 expands ombudsman services to individuals who receive home based long term care through the Medicaid waiver, Choices for Care. The project now has authority to respond to complaints about home based care. It also has the responsibility to review and comment on any existing and proposed laws, regulations or policies that pertain to home based long term care.

Appendix 3

Project Staff

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Hancock
Pittsfield
Stockbridge
Granville

Vermont Legal Aid
FY 2008 Report of Expenditures
Long Term Care Ombudsman Project

	Total	Facilities Grant	CFC Grant
Employment			
State Ombudsman	$58,649.51	$41,602.75	$17,046.76
Ombudsman	$191,649.80	$144,590.47	$47,059.33
AU Professional Staff	$42,779.96	$33,484.91	$9,295.05
Support Staff	$30,973.95	$23,316.47	$7,657.47
Total Salary	$324,053.21	$242,994.60	$81,058.61
Fringe Benefits	$188,807.78	$140,023.19	$48,784.58
Total Employment	$512,860.99	$383,017.79	$129,843.20
Operating			
Occupancy	$52,088.56	$40,733.08	$11,355.47
Telephone	$3,025.26	$2,390.69	$634.57
Office Supplies	$3,377.36	$2,563.14	$814.22
Employment Advertising	$46.32	$35.10	$11.21
Postage	$2,224.88	$1,679.16	$545.73
Equipment Rental and Repair	$2,560.91	$2,008.44	$552.47
Computer, Software, Network	$5,663.81	$4,414.47	$1,249.34
Other Admin Expenses	$3,716.96	$2,968.13	$748.83
Depreciation	$5,995.02	$4,693.84	$1,301.18
Miscellaneous	$47.39	$38.18	$9.22
Total Operating	$78,746.48	$61,524.24	$17,222.24
Grant Specific Costs			
Litigation	$29.70	$7.66	$22.04
Law Library	$7,113.27	$5,637.57	$1,475.70
Travel	$24,218.47	$18,960.12	$5,258.35
Other Direct Grant Costs (Dues)	$1,571.97	$1,318.51	$253.46
Training	$5,012.80	$3,746.29	$1,266.51
Community Outreach	$1,156.13	$872.62	$283.51
Total Grant Specific Costs	$39,102.33	$30,542.77	$8,559.56
Volunteer Costs			
Volunteer Long DistanceTelephone	$0.00	$0.00	
Volunteer Office Supplies	$339.24	$339.24	
Volunteer Postage	$31.40	$31.40	
Volunteer Travel	$9,350.56	$9,350.56	
Volunteer Outreach	$47.93	$47.93	
Volunteer Training	$5,372.07	$5,372.07	
Volunteers - Printing	$0.00	$0.00	
Volunteers - Publications	$0.00	$0.00	
Volunteers - Other	$0.00	$0.00	
	$15,141.20	$15,141.20	
	$645,851.00	$490,226.00	$155,625.00
Paid for with VLA Funds	$38,626.74	$10,350.96	$28,275.78